

Closing Argument

The Pump



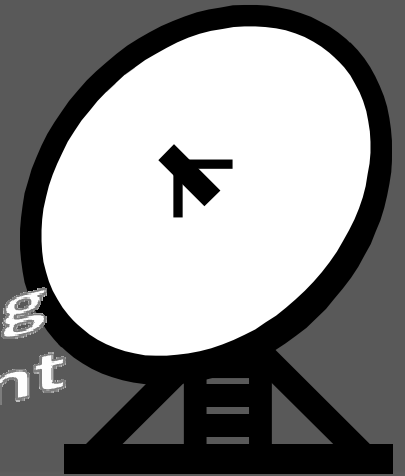
Stealth Scheme

FBI Playing Diabetes Doctor

Discrimination



Reject all applicants using
injection insulin treatment
No matter how well it's
working.



Official Government Policy



Each applicant's medical history will be reviewed on a case by case basis as it pertains to the essential job functions of a Special Agent.

It is important to the FBI's mission that the best qualified individuals without regard to... disability... are hired for the Special Agent position.

Burden Of Proof

Applicant

1. **Applicant qualified for the job.**
 - a) met the job's education, training, experience, and skills requirements
 - b) could perform the "essential functions" of the job
2. **He has a disability.**
3. **Job withdrawn because of his disability**



FBI

1. **That it was a business necessity for the FBI to have the ban.**

FBI Examining Doctor Certifies Jeff Is Fit For Duty

NEW AGENT PHYSICAL ACTIVITIES

FD-997 (2-12-03) 462353

NEW AGENT PHYSICAL ACTIVITIES

Name: JEFFREY KAPANE Date: 12/16/04

Please indicate if applicant/trainee can perform the following:

- Control Techniques:** Yes No
Subject takedown requires grappling in both standing and sitting positions. This drill often includes the fugitive crawl with two trainees restraining a third.
- Personal Weapon Attacks utilizing confrontation drills:**
 - Full contact boxing Yes No
 - Kicks Yes No
 - Fist to elbow strikes Yes No
- Officer Survival Techniques:** Yes No
This activity stresses live or die drills, weapons disarming and retention.
- Carotid Restraint:** Yes No
This technique is used against violently resisting subjects and requires a takedown from the standing position.
- Handcuffing:** Yes No
Actors or students who pose as arrest subjects sometimes resist strenuously.
- Break Falls and Shoulder Rolls:** Yes No
- "O" Course to include:**
 - Climbing and Vaulting Yes No
 - Jumping from High Obstacles Yes No
 - Net rope climbing Yes No
- Yellow Brick Road:** Yes No
A 7.2 run - includes rope climbs and obstacles both natural and man-made.
- Firearms:** Yes No
This activity includes long periods of firing from a prone position. Students must also qualify on an obstacle course, which requires shooting from standing, kneeling and prone positions.

J. C. B. NO 12/16/04
Applicant's Signature Date

John A. Burman MD (714) 529-0543
Physician Signature Telephone Number

Specialty Board Certified: Yes No List Specialty: INT MED

SUBJECT TO PRIVACY ACT PROTECTIVE ORDER

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2. Personal Weapon Attacks utilizing confrontation drills:

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- Kicks Yes No
- Fist to elbow strikes Yes No

3. Officer Survival Techniques: Yes No
This activity stresses live or die drills, weapons disarming and retention.

4. Carotid Restraint: Yes No
This technique is used against violently resisting subjects and requires a takedown from the standing position.

5. Handcuffing: Yes No
Actors or students who pose as arrest subjects sometimes resist strenuously.

6. Break Falls and Shoulder Rolls: Yes No

7. "O" Course to include:

- Climbing and Vaulting Yes No
- Jumping from High Obstacles Yes No
- Net rope climbing Yes No

8. Yellow Brick Road: Yes No
A 7.2 run - includes rope climbs and obstacles both natural and man-made.

9. Firearms: Yes No
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New Agent Mandatory Physical Fitness Test

NAME: Jeffrey Kapehe

NEW AGENT MANDATORY PHYSICAL FITNESS TEST

Upon completion of your examination of the applicant, are there any findings that would preclude the successful completion of the following physical fitness test?

1. Pull-up: Men (5)

Trainee hangs from a horizontal bar, palms turned away from the face and arms fully extended. As the arms are flexed, trainee's body is pulled upward until his chin is up to and over the bar. Trainee's body is then lowered back to the hanging position with arms fully extended.

Yes No

Remarks:

Modified Pull-ups: Women (15)

Trainee lies on her back and extends arms upward, grasping horizontal bar with the palms of her hands turned away from her face. The bar is mounted three feet from the floor and two feet from the wall. Trainee's heels must be touching the floor with the legs and back held straight. As the arms are flexed, the body is pulled up to the bar to a position where the back of the upper arm is parallel to the floor. The body is then lowered back to the starting position. Yes No

Remarks:

2. Push-ups: Men and Women (35)

Trainee begins in front leaning rest position, hands on the floor, arms fully extended, body held straight with the toes touching the floor. As the arms are flexed, the body is lowered to the floor until the upper arm is parallel to the floor. Trainee completes the exercise after returning to the starting position. Yes No

Remarks:

3. Sit-ups: Men and Women (50)

Trainee lies on his back interlacing the fingers of both hands behind the head. The knees are placed at forty-five degree angle with the feet and held in place or placed flat on the floor. Trainee raises upper body and touches the left elbow to the right knee and returns to the starting position. On the next sit-ups trainee alternates elbows and touches the right elbow to the left knee and back to the starting position. Yes No

4. 120 Yard Shuttle Run: Men and Women (22-25 sec.)

The course is thirty yards long with one traffic cone (marker) at each end. Ten yards from each end cone, there are two cones set on the left and two cones set on the right sides of the center line, three feet apart, with the inside cones placed three feet on each side of the center line. Trainee begins by lying flat on his back with head touching the base of the starting cone. On command, trainee regains feet by turning to the right and proceeds through the first set of double cones, and on to the second set; on reaching the end cone, trainee turns or rounds the end cone to the left and returns through the two sets of double cones, and rounds starting cone turning left and repeats the course. Total yardage run is 120 yds. Yes No

Remarks:

5. Two Mile Run: Men and Women (2 miles - 16:30)

The distance is covered over rolling terrain. The running surface is black-top asphalt road. Yes No

Remarks:

PHYSICIAN SIGNATURE: ORIGINAL SIGNED BY JOHN BURPEAU, M.D. DATE: 12/16/04

Upon completion of your examination of the applicant, are there any findings that would preclude the successful completion of the following physical fitness test ?

✓ Pull-up: (5) **Good To Go**

✓ Push-ups: (35) **Good To Go**

✓ Sit-ups: (50) **Good To Go**

✓ 120 Yard Shuttle Run: (22-25) **Good To Go**

✓ Two Mile Run: (16:30) **Good To Go**


Physician Signature: Original signed by JOHN BURPEAU, M.D.

Date: 12/16/04

Concealed Bias

What FBI Told Jeff

FBI's Concealed Motive



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D. C. 20535-0001

February 11, 2005

Mr. Jeffrey Scott Kapche
22518 Rippling Shore Court
Katy, Texas 77494

Dear Mr. Kapche:

This is to advise you that your application for employment as a Special Agent with the Federal Bureau of Investigation has been placed in an inactive status and your conditional offer of appointment letter dated November 23, 2004 is hereby rescinded.

Your desire to become affiliated with the FBI is appreciated. The medical information you submitted however shows that your Insulin Dependent Diabetes Mellitus (IDDM) is not sufficiently controlled to meet the requirements of the Special Agent position. Medical concerns regarding IDDM relate to requirements of the Special

appreciated. The medical information you submitted however shows that your Insulin Dependent Diabetes Mellitus (IDDM) is not sufficiently controlled to meet the requirements of the Special Agent position.

Our medical staff has advised that reconsideration would require an acceptable level of stability (daily log) over several months in addition to the last year's worth of A1C levels and laboratory reports to include blood glucose and urine tests. However, as you have now passed your 37th birthday, no further consideration can be afforded your application for employment as a Special Agent.

Public Law 93-350, approved on July 12, 1974, which liberalized the retirement benefits for Federal law enforcement officers and firefighters, allowed the heads of agencies which had such positions to establish a maximum age for original entry on duty in these positions. Using the authority granted, the Attorney General, with the concurrence of the office of Personnel Management, set the last day of the month during which one reaches his or her 37th birthday as the last date for original entry on duty as a law enforcement officer in the Department of Justice (DOJ). There are

1 SAC, Houston (67B-HQ-1361185)

SUBJECT TO PRIVACY ACT PROTECTIVE ORDER

FBI000695

Memorandum

To : Carolyn Baker, RN
Fitness for Duty Program

Date: 01/11/2005

From : James E. Yoder, MD
Medical Officer

Subject: JEFFREY SCOTT KAPCHE
BUREAU APPLICANT (BUAP)
SPECIAL AGENT (SA) POSITION

BUAP Kapche (DOB: 01/17/68) received applicant Fitness for Duty (FFD) examination on 12/16/04. Standard Form (SF) 93, Report of Medical History, noted insulin dependent diabetes mellitus since age 16 years. Screening laboratory findings included an elevated fasting blood glucose at 204 mg/dL (normal range 65-110 mg/dL), with 3+ glucose on urinary screening (normal is negative). Examining physician stated that hemoglobin A1c determination was reported at 6%, indicating that BUAP Kapche was well controlled. Physical examination was otherwise unremarkable and examiner indicated fitness for worldwide duty.

Brian Tulloch, MD, in letter dated 09/27/04, noted a glycohemoglobin level of 6% and normal lipid profile and liver function tests. BUAP Kapche's occupation listed as detective on SF 93. Dr. Tulloch, in handwritten letter dated 01/04/05, stated, "To my knowledge he has had no diabetes-related trips to the ER."

Medical concerns regarding IDDM relate to requirements of the SA position for unexpected emergency travel to international duty locations to include grueling schedules and austere medical support environments. Tight diabetic control is required to reduce disease progression. Requirements for unstable and irregular working hours with prolonged or non-traditional shifts with unpredictable access to food, water, or medical assistance significantly interferes with the tight control needed to prevent disease progression.

RECOMMENDATION: Recommend discontinuation of the hiring process for the SA position by reason of insulin dependent diabetes mellitus, incompatible with safe and efficient job performance. Reconsideration would require acceptable record of stability (daily log) over several months using a more dependable means of insulin delivery, namely, an insulin pump, to guard against sudden or subtle incapacitation.

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SUBJECT TO PRIVACY ACT PROTECTIVE ORDER

FBI000692

The Pump



FBI Legal See-Saw

Diabetes Is Not
A Disability.

Too Disabled To
Work As Special
Agent

But, never both sides at the same time.

FBI Excuses

1st Excuse

Memo: Diabetes Incompatible With Job

2nd Excuse

Jeff's Diabetes Not Sufficiently Controlled

3rd Excuse

Jeff's Treatment Is Not Reliable

4th Excuse

Jeff's Was Too Old

5th Excuse

Jeff's Treatment Is Not Flexible

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

- 1. Was Jeff Kapche qualified for the job of special agent?**
 - 2. Does Jeff Kapche have a disability?**
 - 3. Did the government withdraw Kapche's job offer because of his disability ?**
-
- 4. Was the FBI's ban on individuals with diabetes treated by injection therapy a business necessity?**

Limitation of Major Life Activities



	Jeff Kapche	Average Person in General Population
Constant blood sugar vigilance	YES	NOT LIMITED
Side effects from insulin	YES	NOT LIMITED
Multiple blood test each day	YES	NOT LIMITED
Limits on quantities & quality of food	YES	NOT LIMITED
Adjust food for insulin & exercise	YES	NOT LIMITED
Adjust exercise for insulin & diet	YES	NOT LIMITED
Adjust insulin for exercise and diet	YES	NOT LIMITED
Monthly/quarterly doctor visits	YES	NOT LIMITED
Adjust math conversions insulin during illness & exercise	YES	NOT LIMITED
Carbohydrate counting and insulin calculation	YES	NOT LIMITED

Author Of The Ban



Dr. James Yoder

- No expertise in diabetes.
- No scientific basis for his ban.
- No studies or evaluation of the risk of pumps or injection.
- Knows nothing about Jeff's injection therapy.
- No objective evidence to support his ban.
- At FBI, non experts overrule medical experts.
- Gave multiple different explanations for rejection of Jeff.



John Raucci

- Was not aware that FBI has a ban.
- Knows nothing about Jeff Kapche.
- Knows nothing about FBI's claim of business necessity.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Plaintiff) CIVIL ACTION NO.

6

MICHAEL B. MUKASEY,)

7

UNITED STATES)

8

9

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11

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Deposition of Dorothy C. Summerfield

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Washington, D.C.

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July 22, 2008

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Reported by: Bonnie L. Russo

22

Job No. 188336

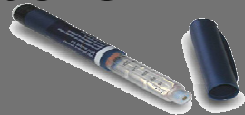
Dorothy Summerfield

e 1

- No checks and balances on Yoder.
- She signed rejection letter on Yoder's decision.
- Rejection was because of diabetes.



Respected Diabetes Authority

- FBI ban not a business necessity.
- Ban makes no sense at all.
- Pen more reliable

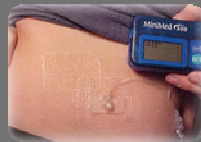


Dr. Desmond Schatz
Prof of Medicine U of Florida

Reliability

Reliability Criteria		
	Insulin Pen	Insulin Pump
Effective Duration	Longer	Shorter
Covering Meals	Same	Same
Risk of DKA	Less Risk	More Risk
Level Of control	Same	Same
Quality Of Insulin	Same	Same
Ease of use	Simple	More Complicated
Cost	\$	\$\$\$\$\$
Access to Supplies	Available Worldwide	Must Be Special Ordered

- Jeff's a role model for people with diabetes.
- "A pump is hardware that can go wrong... get wet... can get blocked."



- FBI refused to talk with him about Jeff as a individual.



Dr. Brian Tulloch
Jeff's Physician

- Passed all tests.
- Gave FBI everything It requested.
- Qualified with a disability.
- 15 years of law enforcement experience.
- Diabetes never interferes with Jeff's work.



Jeff Kapche

- Rejection deeply affected Jeff.
- Jeff had headaches, nausea, sleeplessness and depression.
- FBI's rejection of Jeff was tearing family apart.

Nora Kapche

Respected Diabetes Authority

- Jeff Kapche is qualified.
- Jeff Kapche has a disability.
- You never have a vacation from insulin treated diabetes.
- These (Jeff) are the people that show it can be done.



Dr. James R Gavin
International Diabetes Authority

Limitation of Major Life Activities



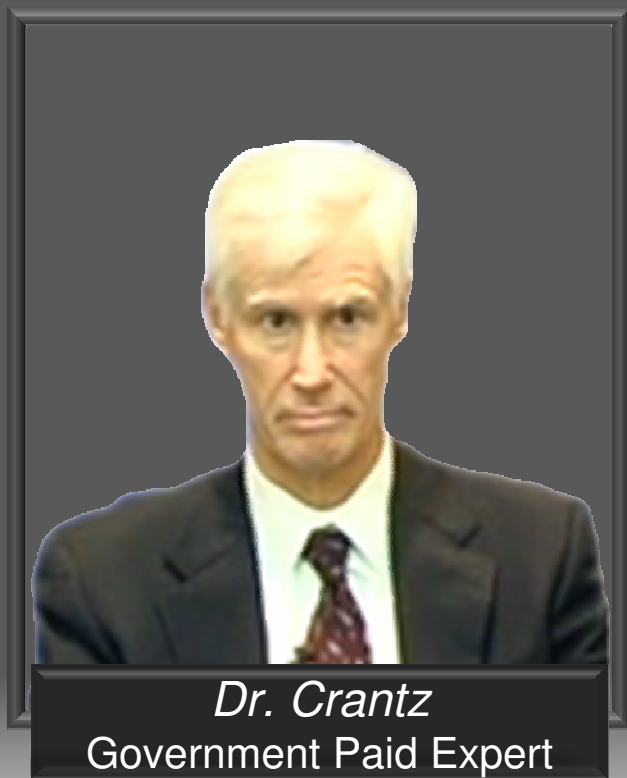
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Dr. James R Gavin
International Diabetes Authority



- Neither therapy superior to the other.



- Takes no position on necessity of ban.
- Believes all people with diabetes should be assessed on case by case basis.
- Admits no scientific basis for ban and literature shows pump therapy as more risky.



David Keith

- Rejected just like Jeff.
- Pump vs. Injections is personal preference.
- Does not like shots and used syringes.
- Did equally well on both therapies.
- Had multiple issues with pump.

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Rebuttal Closing Argument

Diabetic Risks Given the Unique Duties of the Special Agent Position

- Q. Dr. Crantz, knowing what you know about what FBI special agents do, tell us why it's important that FBI special agents with Type I diabetes need to avoid high and low blood sugars?
- A. To me, it's pretty -- probably obvious to everybody. I really don't want a special agent in a critical situation to have a blood sugar that's 280 instead of 100 and have him be in a situation where he may be chasing somebody, may be discharging a weapon. I guess there's a 50/50 chance from the Cox study that he won't be impaired at 270, but there's a 50/50 chance that he will be at a time that I want somebody to be at absolutely, positively peak performance. The same thing goes for low blood sugars. And anything that's going to make it more likely that an agent's blood sugar is within a normal range is to me very important, very critically important.

Plaintiff Ex. 7

Memorandum

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Fitness for Duty Program

From : James E. Yoder, MD
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Subject: JEFFREY SCOTT KAPCHE
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Date: 01/11/2005

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(daily log) over several months using a more dependable means of insulin delivery, namely, an insulin pump, to guard against

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FBI000813